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Order 2003-7-30  
Served: July 28, 2003

**UNITED STATES OF AMERICA  
DEPARTMENT OF TRANSPORTATION  
OFFICE OF THE SECRETARY  
WASHINGTON, D.C.**

Issued by the Department of Transportation  
On the 11<sup>th</sup> day of June, 2003

Application of

**TRIAIR (BERMUDA) LIMITED**

for a foreign air carrier permit under  
49 U.S.C. § 41301

Docket OST-2002-11966 - 2

**ORDER ISSUING FOREIGN AIR CARRIER PERMIT**

**Summary**

In this order we are issuing Triair (Bermuda) Limited (Triair), a foreign air carrier of the United Kingdom, an initial foreign air carrier permit to engage in charter foreign air transportation of persons (and their accompanying baggage) between the United Kingdom and the United States.

**Application**

By application filed March 27, 2002, Triair requests that we issue it an initial foreign air carrier permit to engage in charter foreign air transportation of persons (and their accompanying baggage) between the United Kingdom and the United States pursuant to the bilateral aviation undertakings of the United Kingdom and the United States.<sup>1</sup> Triair states that the authority requested is consistent with the provisions of the bilateral aviation agreement between the United Kingdom and the United States.

No answers were filed in response to Triair's permit application.

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<sup>1</sup> Triair has held Department exemption authority to conduct the charter services at issue here since 2002. See Docket OST-2002-11968. Most recently, on June 6, 2003, we renewed the exemption authority of Triair to conduct the charter services at issue here for a period of one year. See Notice of Action Taken, dated June 6, 2003, in Docket OST-2003-15231.

## Decision

We have reviewed the record in this case and have decided to grant the application using simplified Subpart B procedures.<sup>2</sup> The public was informed of the application by notice in the Federal Register and the Department's published weekly list of applications filed.<sup>3</sup> The notice described the authority sought and gave interested persons an opportunity to submit evidence and objections to the award of the authority. Simplified procedures are appropriate in this case because there are no material determinative issues of fact requiring other procedures.

We find that grant of this foreign air carrier permit is in the public interest, and that Triair is qualified to conduct the proposed operations.

## Public Interest Considerations

The charter authority sought by Triair is consistent with the provisions of the July 23, 1977, Air Services Agreement between the United States and the United Kingdom of Great Britain and Northern Ireland, as amended (the Agreement).

## Fitness

We find that Triair is operationally and financially qualified to conduct the proposed services, and substantially owned and effectively controlled by citizens of the United Kingdom. We make this finding based on the May 25, 1989, U.S.-U.K. Exchange of Notes under which the aviation authorities of each country will normally accept, on a reciprocal basis, the other government's fitness and citizenship determinations in regard to carriers seeking authority to conduct certain bilateral services, including the requested authority.

Triair is a company organized under the laws of England and Wales. Triair proposes to operate corporate jet aircraft for its proposed charter services to and from the United States, and states that its aircraft will be operated privately for the aircraft owner and for *ad hoc* commercial charter flights for third parties for passenger services only.<sup>4</sup> Triair holds effective authority from its homeland to conduct the proposed operations.<sup>5</sup> As noted above, Triair's current

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<sup>2</sup> 14 CFR §§ 302.210 (a)(2) and 302.213.

<sup>3</sup> 67 FR 37906, May 30, 2002.

<sup>4</sup> Triair states that its proposed services will be operated with a UK-registered (G-DAEX) Dassault Falcon 900EX aircraft.

<sup>5</sup> By Diplomatic Note (No. 82) dated September 20, 2001, the Government of the United Kingdom designated Triair pursuant to Article 14 (4) of the Agreement to "operate international charter services between any point or points in the United Kingdom and any point or points in the United States." In addition, Triair holds an Air Operator Certificate (AOC No. GB 2168) issued by the United Kingdom Civil Aviation Authority, a member of the Joint Aviation Authorities, on February 18, 2002.

Department authority was renewed on June 6, 2003, in Docket OST-2003-15231. By memorandum dated April 16, 2002, the Federal Aviation Administration advised us that it knows of no reason why Triair's request for a foreign air carrier permit should not be approved. We have verified Triair's compliance with 14 CFR Parts 203 (Waiver of Warsaw Convention Liability Limits and Defenses), 205 (Aircraft Accident Liability Insurance) and 129 (Foreign Carrier Operations Specifications).

In view of the foregoing, and all the facts of record, we find and conclude that:

1. It is in the public interest to issue a foreign air carrier permit to Triair in the form attached;
2. Triair is fit, willing and able properly to perform the foreign air transportation described in the attached permit and to conform to the provisions of the Act, and to our rules, regulations, and requirements;
3. The public interest requires that the exercise of the privileges granted by the permit should be subject to the terms, conditions, and limitations contained in the attached permit, and to such other reasonable terms, conditions, and limitations required by the public interest as we may prescribe;
4. The issuance of this foreign air carrier permit will not constitute a major regulatory action under the Energy Policy and Conservation Act of 1975, as defined in § 313.4(a)(1) of our Regulations;<sup>6</sup> and
5. The public interest does not require an oral evidentiary hearing on the application.

**ACCORDINGLY,**

1. We issue, in the form attached, a foreign air carrier permit to Triair authorizing it to engage in charter foreign air transportation of persons (and their accompanying baggage) between any point or points in the United Kingdom and any point or points in the United States, using small aircraft (*i.e.*, aircraft designed to have a maximum passenger capacity of not more than 60 seats or a maximum payload capacity of not more than 18,000 pounds);
2. Triair shall also be authorized to engage in other charter trips in foreign air transportation, subject to the terms, conditions, and limitations of the Department's regulations governing charters;

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<sup>6</sup> This finding is based on the fact that the grant of this permit will not result in a near-term net annual change in aircraft fuel consumption of 10 million gallons or more.

3. The exercise of the privileges granted above is subject to Triair's compliance with the conditions listed in Attachment A;
4. To the extent not granted, we deny all requests for relief in Docket OST-2002-11966;
5. Unless disapproved by the President of the United States under § 41307 of Title 49 of the U.S. Code, this order and the attached permit shall become effective on the 61st day after its submission for § 41307 review, or upon the date of receipt of advice from the President or his designee under Executive Order 12597 and implementing regulations that he or she does not intend to disapprove the Department's order under that section, whichever occurs earlier;<sup>7</sup> and
6. We will serve a copy of this order on Triair; the Ambassador of the United Kingdom in the United States; the Department of State (Office of Aviation Negotiations) and the Federal Aviation Administration (New York IFO).

By:

MICHAEL W. REYNOLDS  
Acting Assistant Secretary for Aviation  
and International Affairs

(SEAL)

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[http://dms.dot.gov/reports/reports\\_aviation.asp](http://dms.dot.gov/reports/reports_aviation.asp)*

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<sup>7</sup> This order was submitted for § 41307 review on June 11, 2003. On July 25, 2003, we received notification that the President's designee under Executive Order 12597 and implementing regulations did not intend to disapprove the Department's order.



UNITED STATES OF AMERICA  
DEPARTMENT OF TRANSPORTATION  
OFFICE OF THE SECRETARY  
WASHINGTON, D.C.

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PERMIT TO FOREIGN AIR CARRIER  
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**Triair (Bermuda) Limited**

A Flag Carrier of the United Kingdom of Great Britain  
and Northern Ireland

is authorized, subject to the following provisions, the provisions of Title 49 of the U.S. Code and the orders, rules, and regulations of the Department of Transportation, to engage in charter foreign air transportation of persons (and their accompanying baggage) as follows:

**Between any point or points in the United Kingdom and any  
point or points in the United States**

The holder shall also be authorized to engage in other passenger charter trips in foreign air transportation, subject to the terms, conditions, and limitations of the Department's regulations governing charters.

In the conduct of the operations authorized, the holder shall use only small aircraft (*i.e.*, aircraft designed to have a maximum passenger capacity of not more than 60 seats or a maximum payload capacity of not more than 18,000 pounds).

This permit and the exercise of the privileges granted in it shall be subject to the terms, conditions and limitations in both the order issuing this permit and the attachment to this order, and to all applicable provisions of any treaty, convention or agreement affecting international air transportation now in effect, or that may become effective during the period this permit remains in effect, to which the United States and the holder's homeland are or shall become parties, and to the following:

This permit shall be effective on July 25, 2003. Unless otherwise terminated at an earlier date pursuant to the terms of any applicable treaty, convention or agreement, this permit shall terminate (1) upon the dissolution or liquidation of the holder to whom it

was issued; (2) upon the effective date of any treaty, convention, or agreement or amendment, which shall have the effect of eliminating the bilateral right for the service authorized by this permit from the service which may be operated by airlines designated by the Government of the United Kingdom (or, if the right is partially eliminated, then the authority of this permit shall terminate in like part); (3) upon the effective date of any permit granted by the Department to any other carrier designated by the Government of the United Kingdom in lieu of the holder; or (4) upon the termination or expiration of the applicable air services agreement between the United States and the United Kingdom. However, clause (4) of this paragraph shall not apply if prior to such termination or expiration, the foreign air transportation authorized herein becomes the subject of another treaty, convention or agreement to which the United States and the United Kingdom become parties.

The Department of Transportation has executed this permit and affixed its seal on June 11, 2003.

By:

MICHAEL W. REYNOLDS  
Acting Assistant Secretary for Aviation  
and International Affairs

(SEAL)

**Foreign Carrier Conditions**

In the conduct of the operations authorized, the foreign carrier applicant(s) shall:

- (1) Not conduct any operations unless it holds a currently effective authorization from its homeland for such operations, and it has filed a copy of such authorization with the Department;
- (2) Comply with all applicable requirements of the Federal Aviation Administration, including, but not limited to, 14 CFR Parts 129, 91, and 36, and with all applicable U.S. Government requirements concerning security;<sup>1</sup>
- (3) Comply with the requirements for minimum insurance coverage contained in 14 CFR Part 205, and, prior to the commencement of any operations under this authority, file evidence of such coverage, in the form of a completed OST Form 6411, with the Federal Aviation Administration's Program Management Branch (AFS-260), Flight Standards Service (any changes to, or termination of, insurance also shall be filed with that office);
- (4) Not operate aircraft under this authority unless it complies with operational safety requirements at least equivalent to Annex 6 of the Chicago Convention;
- (5) Conform to the airworthiness and airman competency requirements of its Government for international air services;
- (6) Except as specifically exempted or otherwise provided for in a Department Order, comply with the requirements of 14 CFR Part 203, concerning waiver of Warsaw Convention liability limits and defenses;
- (7) Agree that operations under this authority constitute a waiver of sovereign immunity, for the purposes of 28 U.S.C. 1605(a), but only with respect to those actions or proceedings instituted against it in any court or other tribunal in the United States that are: (a) based on its operations in international air transportation that, according to the contract of carriage, include a point in the United States as a point of origin, point of destination, or agreed stopping place, or for which the contract of carriage was purchased in the United States; or (b) based on a claim under any international agreement or treaty cognizable in any court or other tribunal of the United States. In this condition, the term "international air transportation" means "international transportation" as defined by the Warsaw Convention, except that all States shall be considered to be High Contracting Parties for the purpose of this definition;
- (8) Except as specifically authorized by the Department, originate or terminate all flights to/from the United States in its homeland;
- (9) Comply with the requirements of 14 CFR Part 217, concerning the reporting of scheduled, nonscheduled, and charter data;
- (10) If charter operations are authorized, except as otherwise provided in the applicable aviation agreement, comply with the Department's rules governing charters (including 14 CFR Parts 212 and 380); and
- (11) Comply with such other reasonable terms, conditions, and limitations required by the public interest as may be prescribed by the Department, with all applicable orders or regulations of other U.S. agencies and courts, and with all applicable laws of the United States.

This authority shall not be effective during any period when the holder is not in compliance with the conditions imposed above. Moreover, this authority cannot be sold or otherwise transferred without explicit Department approval under Title 49 of the U.S. Code.

<sup>1</sup> To assure compliance with all applicable U.S. Government requirements concerning security, the holder should, before commencing any new service (including charter flights) from a foreign airport that would be the holder's last point of departure for the United States, contact its Principal Security Inspector (PSI) to advise the PSI of its plans and to find out whether the Transportation Security Administration has determined that security is adequate to allow such airport(s) to be served.